

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GARY LOMAX,)	Case No. ED CV 11-01029-DSF (VBK)
)	
Petitioner,)	MEMORANDUM AND ORDER DISMISSING
)	PETITION FOR WRIT OF HABEAS
v.)	CORPUS
)	
TERRI GONZOLES,)	
)	
Respondent.)	
_____)	

On July 5, 2011, Gary Lomax (hereinafter referred to as "Petitioner"), in state custody, filed a "Petition for Writ of Habeas Corpus" in the United States District Court for the Central District of California.¹ Petitioner was convicted on July 21, 2010 of second degree burglary in the Riverside County Superior Court. (See Petition at pp. 1-2.) Petitioner alleges the following claims: "I think I was giving [sic] more time then [sic] I should have got due to the charge that was added to the crime of burglary that I was arrested for. Three years should have been max.; and 2) People v. Superior Court

¹ The Petition was originally filed on May 6, 2011 in the United States District Court for the Southern District of California. On July 5, 2011, an Order Transferring Action to United States District Court for the Central District of California, Eastern Division was issued by United States District Judge Larry Alan Burns.

1 (Romero).” (Petition at 6-7.)


2 The Petition does not allege that Petitioner filed a petition for
3 review or habeas corpus petition in the California Supreme Court.
4 (Petition at 2-4). However, a search of the California Appellate
5 Courts’ website reveals that Petitioner filed a habeas corpus petition
6 in the California Supreme Court on March 15, 2011, which remains
7 pending as of the present date. See
8 <http://appellatecases.courtinfo.ca.gov>.

9 A federal court will not review a state prisoner’s petition for
10 writ of habeas corpus unless it appears that the prisoner has
11 exhausted available state remedies. 28 U.S.C. §2254(b) and (c);
12 O’Sullivan v. Boerckel, 526 U.S. 838, 842, 119 S.Ct. 1728 (1999); Park
13 v. California, 202 F.3d 1146, 1150 (9th Cir.), cert. denied, 531 U.S.
14 918, 121 S.Ct. 277 (2000); Carothers v. Rhay, 594 F.2d 225, 228 (9th
15 Cir. 1979); see Rose v. Lundy, 455 U.S. 509, 522, 102 S.Ct. 1198
16 (1982). “For reasons of federalism, 28 U.S.C. §2254 requires federal
17 courts to give the states an initial opportunity to correct alleged
18 violations of its prisoners’ federal rights.” Kellotat v. Cupp, 719
19 F.2d 1027, 1029 (9th Cir. 1983). The exhaustion requirement seeks to
20 avoid “the unseemliness of a federal district court’s overturning a
21 state court conviction without the state courts having had an
22 opportunity to convert the constitutional violation in the first
23 instance.” O’Sullivan v. Boerckel, 526 U.S. at 844-45.

24 Exhaustion requires that the prisoner’s contentions be fairly
25 presented to the highest court of the state. Carothers, supra, 594
26 F.2d at 228; see Allbee v. Cupp, 716 F.2d 635, 636-37 (9th Cir. 1983).
27 Since Petitioner is still challenging his conviction in the state
28 courts, the present Petition should be dismissed without prejudice. .

1 **ACCORDINGLY, IT IS ORDERED** that the Petition be dismissed without
2 prejudice.

3
4 DATED: July 20, 2011



DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

6 Presented on
7 July 18, 2011 by:

8 /s/
9 VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE